

# Planning Board Minutes 06/21/2016

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MONSON PLANNING BOARD  
MINUTES JUNE 21, 2016

MEMBERS PRESENT: Paul Hatch, Kevin Haley, Marilyn Gorman Fil and Craig Sweitzer.

MEMBERS ABSENT: Karen King and Tara Hengeveld.

ALSO PRESENT: Dan Laroche, Town Planner.

Craig Sweitzer, Chairman moved to request that Associate Member Marilyn Gorman Fil vote on all matters at the meeting in order to fulfil the quorum requirement.

Paul Hatch seconded the motion.

It was so voted, unanimous.

Dan Laroche stated Joel D. Castleman, Esq., is asking that the Planning Board rescind any and all permits granted to his client Levesque Properties, LLC without prejudice.

Craig Sweitzer questioned what specifically that action was called and where was it written the Planning Board had the authority to do that?

Dan Laroche stated he had no previous experience with such a request. He suggested reading the letter from Atty. Castleman into the minutes.

“RE: Levesque Properties, LLC/354 Main Street, Monson  
James S. Haynes v Levesque Properties, LLC, et al

Dear Mr. Laroche:

This office represents Levesque Properties, LLC which as you are aware is involved in a Land Court action that names the Monson Planning Board as a party. The parties to this action have reached an agreement to resolve the issues involving the Planning Board, and thus dismiss them from the matter. In order to do so my client has agreed to withdraw all past and current Special Permit applications, including all Site Plan Approval applications. If the by-law change my client will be requesting is enacted, then he would re-apply for new permits on the property pursuant to our settlement agreement.

To this end please accept this letter as a formal request on behalf of my client to withdraw all current applications for the property located at 354 Main Street, and to rescind any and all permits granted to my client without prejudice.”

Dan Laroche stated he believed this was Mr. Haynes surety that Mr. Levesque will not go forward with the Special Permits and Site Plan and that the changes to the Zoning Bylaws would occur.

Paul Hatch questioned what would happen if the Zoning Bylaw changes were voted down at Town Meeting?

Dan Laroche stated that would be a problem for Mr. Levesque.

Paul Hatch questioned the liability for the Town.

Craig Sweitzer reiterated that this was a formal request from Atty. Castleman on behalf of his client to withdraw all current applications for the property at 354 Main Street, and to rescind any and all permits granted to his client without prejudice. Mr. Sweitzer said the language in the letter is not as clear as it could be.

Kevin Haley questioned if Town Counsel was aware of the request?

Dan Laroche stated he had been in discussion with Town Counsel throughout the process, and Town Counsel has been copies on everything as events unfolded.

Paul Hatch stated he would like some proof that the Board has the authority to rescind its decisions or he would abstain from the vote.

Dan Laroche stated the Board would be following the legal process. The Planning Board approved a Special Permit for Stormwater Management, a Special Permit because the property is in the Water Supply Protection District and granted Site Plan Approval to Levesque Properties, LLC for property at 354 Main Street. The decision was appealed by an abutter to the Superior Court. The Court allowed the Attorneys for Levesque Properties, LLC and James S. Haynes to come up with a settlement agreement and this request is part of the settlement agreement. The Judge is not involved in reaching the settlement agreement, just gave the parties the opportunity to reach one.

Craig Sweitzer questioned if there was a motion to accept the formal request from Joel D. Castleman, Esq., dated June 7, 2016 on behalf of his client Levesque Properties, LLC to withdraw all current applications for the property located at 354 Main Street, and for the Planning Board to rescind its approval of the Special Permit for Stormwater Management, the Special Permit for the Water Supply Protection District and Site Plan Approval as detailed in the Notice of Decision dated December 24, 2015.

Kevin Haley so moved.

Paul Hatch seconded.

It was so voted, unanimous.

7:35 Robert Kaddy, 65 Butler Road met informally with the Board to discuss a residential lighting bylaw.

Also present: Valerie Bogacz-Beaudoin.

Dan Laroche stated currently there are no regulations regarding residential lighting.

Mr. Kaddy stated he believed this to be an oversight, as the Board made changes to the Zoning Bylaws with regard to lighting for commercial buildings. He described a situation that he is experiencing with a home across the street on Butler Road from his residence that has red blinking high intensity lights that shine into his living room and bedroom and high intensity motion detector lights that also shine into his living room and bedroom. When he called the Town Offices he discovered the Town did not have a zoning bylaw regulating residential lighting and there was nothing in the Board of Health regulations that addressed the situation. He stated he sent a letter to the Board of Selectmen to consider developing a Town Bylaw for residential lighting.

Valerie Bogacz-Beaudoin stated she was Chairman of the Town Bylaw Committee and attended a Board of Selectmen meeting when the letter was discussed. The Board of Selectmen felt that a residential lighting bylaw was better suited to the Zoning Bylaws and decided to forward the letter to the Planning Board. She stated the discussion took place approximately three months ago and the Planning Board should have received a letter from the Board of Selectmen.

Craig Sweitzer stated any changes to the Zoning Bylaws would require a public hearing after which the residents of the Town would vote at Town Meeting.

Mr. Kaddy stated he did not experience the problem during the summer months because the leaves on the trees block the lights, it is during the winter months. To try and alleviate the situation a letter was sent by his legal counsel to the owners of the property, but they did not respond. He stated he has the option of going to Housing Court, but preferred to work through the community because this is a situation that probably affects other residents in the Town. There is documentation that Monson Police Officers have observed the lights. He stated he wrote to the Attorney Generals' Office who sent information from the Citizen Planner Training Collaborative that contained residential lighting bylaws adopted by other communities.

Dan Laroche stated the first question is which is more appropriate to include a residential lighting bylaw, in the Town Bylaws or Zoning Bylaws? The issue with Zoning Bylaws is that grandfathering comes into play, whereas a Town Bylaw executes immediately there is no back reach. A Zoning Bylaw change does not apply to for instance residential lighting that is in existence prior to approval of the Bylaw change at Town Meeting. The other issue is enforcement by either the Police Department if it is a Town Bylaw or the Zoning Enforcement Officer if it is a Zoning Bylaw.

Mr. Kaddy stated the problem occurs in the evening, from that perspective a Town Bylaw would be more appropriate with enforcement by the Police Department because they would be able to respond at any time night or day. He stated he would like to go back to the Board of Selectmen to resubmit his request to the Town Bylaw Committee. He stated he was trying to do this as pleasantly as possible and was asking for help from the Town.

Craig Sweitzer questioned if the Board members wanted to notify the Board of Selectmen that the Planning Board had no desire to take the matter up at this point due to the concerns with enforcement of a Zoning Bylaw and grandfathering.

Paul Hatch stated a Zoning Bylaw for residential lighting would affect only lighting that is installed after the Zoning Bylaw change is approved by residents at a Town Meeting, it would seem a Town Bylaw would be more appropriate for this situation.

Dan Laroche stated he would inform the Board of Selectmen that the Planning Board was not going to take up the issue of a Zoning Bylaw for Residential Lighting as this time.

8:15 Paul Hatch moved to accept the minutes of May 17, 2016 as presented.

Marilyn Gorman Fil seconded.

Voting aye: Craig Sweitzer, Paul Hatch and Marilyn Gorman Fil.

Kevin Haley abstained.

Dan Laroche stated he wanted to give the Board a heads up that a medical marijuana company has purchased industrial property on Palmer Road, and another medical marijuana group may or may not request a zone change overlay district for another property.

Kevin Haley stated he would not able to sit on the Board for either one if and when they come before the Planning Board.

8:25 Paul Hatch moved to adjourn.

Kevin Haley seconded.

It was so voted unanimous.

Respectfully submitted,

Linda A. Hull